The LEARNED READING

Of

Sir Francis Bacon,

One of her Majesties learned Counsell at Law, upon the Statute of USES:

Being his double Reading to the Honourable Society of GRAYES Inne.

Published for the Common good.

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Lectura Francisci Bacon unius de
Consilio Dnae Reginae in legibus eruditis
duplicis Lectoris super Statutum
edictum 27 H 8 Cap 10 de usibus in
possessionem transferendis 1853

The Learned Reading of Sir FRANCIS BACON, upon the Statute of Vſes.

I Have choſen to Read upon the Law of Vſes made 27. *Hen.*8. a Law whereupon the Inheritances of this Realme are toſſed at this day like a Ship upon the Sea, in ſuch ſort that it is hard to ſay which Barke will ſinke, and which will get to the Haven, that is to ſay, what aſſurances will ſtand good, and what will not; whether is this any lack or default, in the Pilots their grave and learned Judges: but the Tydes and Currents of received errours, and unwarranted and abuſive experience, have bin ſo ſtrong, as they were not able to keepe a right courſe according to the Law, ſo as this Statute is in great part, as a Law made in the Parliament,

held 35. *Regine*, for in 37. *Regine*, by the notable judge-
given ment upon ſolemne Arguments, of all the Judges aſſembled in
the Exchequer Chamber, in the famous caſe betweene *Dillon*
and *Frayne*, concerning an aſſurance by *Chudley*: this Law
began to be reduced to a true and ſound Expoſition, and the falſe
and perverted Expoſition, which had continued for ſo many
yeares, but never countenanced by any rule or authority of
weight, but onely intertained in a popular conceipt, & in practice
at adventure grew to be controled, ſince which time (as it com-
meth to paſſe alwaies upon the firſt reforming of inveterate
errours) many doubts, and perplexed Queſtions have riſen,
which are not yet reſolved, nor the Law thereupon ſetled: The
conſideration whereof moved me to take the occaſion of per-
forming this particular duty to the Houſe, to ſee if I could by
it my travell, bring to a more generall good of the Com-
mon wealth.

either Herein though I could not be ignorant of the difficulty of
the matter, which he that taketh in hand ſhall ſoone find, or much
leſſe of my owne unableneſſe, which I had continuall ſence
and feeling of; yet becauſe I had more meanes of abſolution
then the younger ſort, and more leaſure then the greater ſort,
I did thinke it not impoſſible to worke ſome profitable effect,
the rather becauſe where an inferior wit is bent, and conver-
ſant upon one Subject, he ſhall many times with patience and
meditation diſſolve, and undoe many of the knots which a
greater wit, diſtracted with many matters would rather cut
o in two then unknit, at the leaſt if my ingention or judgement
be too barren, or too weake; yet by the benefit of other Arts,
I did hope to diſpoſe or digeſt, the authorities or Opinions
of which are in Caſes of uſe in ſuch order and method, as they
ſhould take light one from another, though they tooke no
light from me, and like to the matter of my Reading ſhall my
manner be, for my meaning is to revive and recontinue the
ancient forme of Reading, which you may ſee in Mr. *Fra-
wicker*, upon the Prerogative, and all other Readings of anci-
ent time, being of leſſe oſtentation and more fruite, then the
manner lately accuſtomed, for the uſe then was ſubſtantially

to

to expound the Statutes, by grounds and diverſities, as you ſhall find the Readings ſtill to run upon caſe of the like Law, and contrary Law, whereof the one includes the learning of a difference, and not to ſtir conciſe and ſubtile doubts, or to contrive tedious and intricate Caſes, whereof all ſaving one are buried, and the greater part of that one caſe which is taken, is commonly nothing to the matter in hand, but my labour ſhall be in the antient courſe, to open the Law upon doubts, and not doubts upon the Law.

Expoſitio Statuti.

THe Expoſition of this Statute conſiſts upon the matter, without the Statutes, upon the matter within the Statute.

Three things concerning theſe Statutes, and all other Statutes which are helpes and inducements to the right underſtanding of my Statute, and yet are no part of the Statute it ſelfe.

The conſideration of the Statute at the Common Law. 1.

The conſideration of the miſchiefe which the Statute intendeth to redreſſe, as any other miſchiefe, which an Expoſitor of the Statute this way or that way may breed. 2.

Certaine Maximes of the common Ley, touching Expoſition of Statutes: having therefore framed ſixe diviſions according to the number of Readings upon the Statute it ſelfe, I have likewiſe divided the matter without the Statute into ſixe Introductions or Diſcourſes, ſo that for every dayes Reading I have made triple propoſition. 3.

1. *Vn Preface, or Introduction.*
2. *Vn Diviſion upon the Law it ſelfe,*
3. *A few brief Caſes, for Exerciſe and Argument.*

The laſt of which I would have forborne, and according to the

the antient manner, You ſhould have taken ſome of my points upon my Diviſions, one, two, or more as you ſhould have thought good, ſave that I had this regard, that the younger ſort of the Barre were not ſo converſant, upon matters upon the Statutes, and for that Caſe I have interlaced ſome matters at the Common Law that are more familiar within the books,

1. The firſt matter I will Diſcourſe unto you, is the nature and definition of an uſe, and his Inceſſion and Progreſſion before the Statute.

2. The Second Diſcourſe ſhall be of the ſecond ſpring of this Tree of Uſes ſince the Statute.

3. The Third Diſcourſe ſhall be of the Eſtate of the aſſurance of this Realme at this day upon Uſes, and what kind of them is convenient and reaſonable, and not fit to be touched, as far as ſence of Law and naturall conſtruction of the Statute will give leave, and what kind of them is convenient and meete to bee ſuppreſſed.

4. The Fourth Diſcourſe ſhall be of certaine Rules and Expoſitions of Lawes applyed to this preſent purpoſe.

5. The Fifth Diſcourſe ſhall bee of the beſt courſe to remedy the ſame inconveniences now a foot, by conſtruction of the Statute, withoutoffering violence to the letter or ſence.

6. The Sixt and laſt Diſcourſe ſhall be of the beſt courſe to remedy the ſame inconveniences, and to declare the Law by Act of Parliament, which laſt I thinke good to reſerve and not to publiſh.

The nature of a uſe is beſt diſcerned by conſidering what it is not, and then what it is, for it is the nature of all humane Science, and knowledge to proceed moſt ſafely by Negative and excluſive.

Firſt, uſe is no right, title, or intereſt in Law, and therefore Maſter *Attorney* who read upon this Statute ſaid well, that there are but two rights.

Ius in Re.
Ius ad Rem.

The one is an Eſtate which is *Ius in Re*, the other a demand

mand which is *Ius ad Rem*, but a uſe is neither, ſo that in 24. *H.* 8. it is ſaid that the ſaving of the Statute of *I. R.* 3. which ſaveth any right or intereſt of Intayle, muſt be underſtood of Intayles of the poſſeſſion, and not of the part of the uſe, becauſe a uſe is no right nor intereſt; ſo againe, you ſee that *Littletons* conceipt, that an uſe ſhould amount to a Tenancy at will, whereupon a releaſe might well inure, becauſe of pravity is controled by 4. *Et* 5. *H.* 7. and diverſe other bookes, which ſaid that *Ceſty que uſe* is puniſhable in an Action of Treſpaſſe towards the Feoffees onely 5. *H.* 5. ſeemeth to be at ſome diſcord with other Bookes where it is admitted for Law, that if there be *Ceſty que uſe* of an Advowſon, and hee bee out-lawed in a perſonall Action, the King ſhould have the preſentment, which Caſe Maſter *Evans* in the argument of *Chudleyes* Caſe did ſeeme to reconcile this where *Ceſty que uſe* being utlaird, had preſented in his owne name, there the King ſhould remove his incumbent, and no ſuch thing can be collected upon that Booke, and therefore I conceive the errour grew upon this, that becauſe it was generally thought, that a uſe was but a penancy of profits, and then againe becauſe the Law is that upon Utlayers, upon perſonall Actions, the King ſhall have the penancy of profits, they tooke that to bee one, and the ſelfe ſame thing which *Ceſty que uſe* had, and which the King was intituled unto which was not ſo, for the King had remedy in Law for his penancy of profits, but *Ceſty que uſe* had none, the Bookes goe further and ſay, that a uſe is nothing, as in 2. *H.* 7. *Dett fuit Port*, and counted *Sur leas* for yeares rent &c. the Defendant pleaded in Barre, that the Plaintiffe *Nihil habuit tempore diviſionis*, the Plaintiffe made a ſpeciall replication, and ſhewed that he had no uſe and iſſue joyned upon that, wherefore it appeareth, that if hee had taken iſſue upon the defendants Plea, it ſhould have bin found againſt him: So againe in 4. *Regine*, in the Caſe of the Lord Sands, the truth of the caſe was a Fine leavied by *Ceſty que uſe* before the Statute, and this comming in queſtion ſince the Statute upon an averment by the Plaintiffes *Quod partes finis nihil habuerint*,

it is ſaid that the Defendant may ſhew the ſpeciall matter of the uſe, and it ſhall be no departure from the firſt pleading of the ſame, and it is ſaid further that the averment given in 4. *H.* 7. *Quod partes finis nihil habuerint, nec in poſſeſſione, nec in uſu* went out upon this Statute of 27. *Hen.* 8. and was no more now to be accepted; but yet it appeares, that if iſſue had bin taken upon the generall averment, without the ſpeciall matter ſhewed, it ſhould have bin found, for him that tooke the averment becauſe a uſe is nothing, but theſe bookes are not to be taken generally or groſly, for wee ſee in the ſame bookes, when an uſe is ſpecially alleadged, the Law taketh knowledge of it, but the ſence of it is, that uſe is nothing for which remedy is given by the courſe of the Common Law, ſo as the Law knoweth it, but protects it not; and therefore when the queſtion commeth whether it hath any being in Nature and Conſcience the Law accepteth of it, and therefore *Littletons* Caſe is good Law, that hee which hath but forty ſhillings Free-hold in uſe, ſhall be ſworne in an inqueſt, for it is ruled *Secundum dominium laterale*, and not *Secundum dominium legitimum, nam natura dominus eſt quia fructum ex re percipit*. And ſome doubt upon Subſidies and Taxes *Ceſty que uſe* ſhould be valued as an owner: So likewiſe if *Ceſty que uſe* had reſolved his uſe unto the Feoffee for ſixe pound, or contracted with a ſtranger for the like ſome, there is no doubt but it is a good conſtruction, whereon to ground an Action upon the Caſe, for mony for releaſe of a Suite in the *Chancery* is a good *quid pro quo*, therefore to conclude, though a uſe be nothing in Law to yeeld remedy by courſe of Law, yet it is ſomewhat in reputation of Law and Conſcience, for that may be ſomewhat in conſcience which is nothing in Law, like as that may be ſomething in Law which is nothing in Conſcience; as if the Feoffees had made a feoffment over in Fee, *Bona fide*, upon good conſideration, and upon a *Subpœna* brought againſt them, hee pleaded this matter in *Chancery*, thus had beene nothing in Conſcience, not as to diſcharge them of damages.

A ſecond negative fit to be underſtood is, that a uſe is no

Covin,

Covin, nor it is no colluſion, as the word is now uſed, for it is to be noted, that where a man doth remove the ſtate and poſſeſſion of Land, or goods out of himſelfe unto another upon truſt, it is either a ſpeciall truſt, or a generall truſt.

The ſpeciall truſt is either { *Lawfull,* *Or* *Vnlawfull.* }

The ſpeciall truſt Unlawfull, is according to the Caſe provided, for by ancient Statutes of the profits, as where it is to defraud Creditors, or to get men to maintaine ſuites, or to defeate the tenancy to the precipe, or the Statute of *Mortmaine*, or the Lords of their wardſhips or the like, and thoſe are termed Frauds, Covins, or Colluſions.

The ſpeciall truſt Lawfull is, as when I infeoffee ſome of my friends, becauſe I am to goe beyond the Seas, or becauſe I would free the Land from ſome ſeverall Statute, or Bond which I am to enter, into or upon intent to be infeoft'd, or intent to vouched, and ſo to ſuffer a common Recovery, or upon intent that the Feoffees ſhall infeoffee over a Stranger, and infinite the like intents and purpoſes, which fall out in mens dealings and occaſions, and this wee call Confidence, and the Bookes doe call them intents, but where the truſt is not ſpeciall, nor tranſitory, but generall and permanent, there it is a uſe; and therefore theſe three are to be diſtinguiſhed, and not confounded by Covin Confidence, uſe.

So as now we are come by Negatives to the Affirmative, what a uſe is agreeable to the definition in *Plowden*, 352. *De Lamers* Caſe, where it is ſaid:

Vſe is a truſt repoſed by any perſon in the Terre-tenant, that he may ſuffer him to take the profits, and hee that will performe his intent. But it is a ſhorter Speech to ſay, that

Vſus eſt dominium fiduciarium:
Vſe is an owners life in truſt:
So that *Vſus eſt ſtatus, ſive poſſeſſio totius, differ. ſecun-*

 dum

dumrationem fori quàm ſecundum naturamrei, for that one of them is in Court of Law, the other in court of Conſcience, and for a truſt which is the way to an uſe, it is exceeding well defined by a Civilian of great underſtanding :

Fides eſt obligatio Conſcientiæ unius ad intentionem alterius.

And they have a good diviſion likewiſe of Rights.

Ius precarium,
Ius fiduciarium.
Ius legitimum,

1. A right in courteſie, for the which there is no remedy at all.
2. A right in truſt for which there is a remedy, onely but in Conſcience.
3. A right in Law.

So much of the nature and definition of an uſe.

It followeth to conſider the parts and properties of an uſe wherein by the conſent of all Bookes, and it was diſtinctly delivered by Juſtice *Walmeley*, in 36. *Elizabeth.*

That a truſt conſiſteth upon three parts.

1 The Firſt, that the Feoffee will ſuffer the Feoffer to take the profits.

2 The Second, that the Feoffee upon requeſt of the Feoffer, or notice of his Will, will execute the Eſtates to the Feoffer, or his Heires, or any other by his direction.

3 The Third, that if the Feoffee be diſſeiſed, and ſo the Feoffer diſturbed, the Feoffee will re-enter, or bring an action to re-continue the poſſeſſion, ſo that thoſe three, pernancy of Profits, execution of Eſtates, and defence of the Land, are the three poynts of truſt.

The properties of an uſe they are exceeding well ſet forth, by former Juſtice in the ſame Caſe, and they be three,

Uſes (ſaith he) are created by Confidence.

1. Preſſed by privity, which is nothing elſe but a continuance.
2.

Of

Of the Confidence without interruption and ordered and guided by Conſcience: either by the private Conſcience of the Feoffee; Or the generall Conſcience of the Eſtate which is *Chancery.* 3.

The two former of which (becauſe they bee matters more throughly beaten, and wee ſhall have occaſion to handle them) we will not now debate upon.

But the third we will ſpeake ſomewhat of both, becauſe it is a key to open many of true reaſons, and termings of uſes, and becauſe it tendeth to decide out great and principall doubts at this day.

Cooke Soliciter entring into his Argument of *Chudleyes* Caſe, ſaid ſharply and fitly, I will put never a Caſe but ſhall be of an uſe, for a uſe in Law hath no fellow; meaning that the learning of uſes is not to bee matched with other Learnings: *Anderſon* chiefe Juſtice in the Argument of the ſame Caſe, did truely and profoundly controule the Vulgar opinion collected upon the fifth *E.* 4. that there might be *Poſſeſſio fratris* of a uſe, for he ſaid that it was no more but that the Chancelee would conſult with the Rules of Law, where the intention of the parties did not ſpecially appeare, and therefore the private conceipt which *Glanvile* Juſtice cited in the 42. *Reginæ* in the caſe of *Corbet*, in the Common Plea of one of *Lincolnes Inne*, whom he named not, but ſeemed to allow is not ſound, which was, that a uſe was but a limitation, and did enſue the nature of a poſſeſſion.

This very conceipt was ſet on foot in 27. *H.* 8. in the Lord *Darcies* Caſe, in which time they began to heave at uſes, for there after the Realme had many ages together put in ure the paſſage of uſes by Will, they began to argue that an uſe was not deviſeable, but that it did enſue the nature of the Land, and the ſame yeare after this Statute was made; ſo that this opinion ſeemeth ever to bee, and for ever to an Act of Parliament touching uſes; and if it bee ſo meant, now meant I like it well: but in the meane time the Opinion it ſelfe is to be recited, and becauſe in the ſame Caſe of *Corbet* 3. reverent Judges of the Court of Common Pleas, did de-

liver and publiſh their Opinion, though not directly upon the point adjudged, yet *obiter* as one of the Reaſons of their judgement, that an uſe of Inheritance could not be limited to ceaſe, and againe, that the limitation of a new uſe could not be to a Stranger, ruling uſes meerely according to the ground of poſſeſſion, it is worth the labour to examine, that learning by 3. *Hen.* 7. You may collect that if the Feoffees had bin diſſeiſed by the Common Law, and an Anceſtor collaterall of *Ceſty que uſe* had releaſed unto the diſſeiſor and his warranty had attached upon *Ceſty que uſe*, yet the Chancellour upon this matter ſhewed, would have not reſpect unto it, to compell the Feoffees to execute the Eſtate unto the diſſeiſor, for there the caſe being that *Ceſty que uſe* Intayle having made an aſſurance by fine and recovery, and by warranty which deſcended upon his iſſue, two of the Judges held that the uſe is not extinct, and *Bryan* and *Huſſey* that held the contrary ſaid, that the Common Law is altered by the new Statute, whereby they admit, that by the Common Law that warranty will not bind and extinct a right of a uſe, as it will doe a right of poſſeſſion, and the reaſon is, becauſe the Law of Collaterall garranty is a hard Law, and not to be conſidered in a Court of Conſcience, in 5. *Edw.* 4. It is ſaid that if *Ceſty que uſe* be attainted, *quære*, who ſhall have the Land, for the Lord ſhall not have the Land, ſo as there the uſe doth not imitate the poſſeſſion, and the reaſon is, becauſe the Lord hath a Tent is by Title, for that is nothing to the *Subpœna*, becauſe the Feoffees intent was never to advance the Lord, but onely his owne bloud, and therefore the *quære* of the Booke ariſeth what the truſt and confidence of the Feoffee did tye him to doe, as whether he ſhould not ſell the Land to the uſe of the Feoffees Will, or in pious uſes, ſo favourably they tooke the intent in thoſe dayes, as you find in 27. *H.* 6. that if a man had appointed his uſe to one for life, the remainder in Fee to another, and *Ceſty que uſe* for life had refuſed, becauſe the intent appeared not to advance the Heire at all, nor him in reverſion, preſently the Feoffee ſhould have the Eſtate for life of him that refuſed ſome waies to the behoofe of the Feoffer:

But

But to proceed in ſome better order towards the diſproofe of this Opinion of limitation, there be foure points wherein we will examine the nature of uſes.

The rayſing of them. 1.
The preſerving of them. 2.
The transferring of them. 3.
The extinguiſhing of them. 4.

In all theſe Foure, you ſhall ſee apparantly that uſes ſtand upon their owne reaſons, utterly differing from Caſes of poſſeſſion, I would have one Caſe ſhewed by men learned by the Law, where there is a deed, and yet there need a conſideration, as for paroll, the Law adjudgeth it too light to give a uſe without conſideration, but a deed ever in Law imports a conſideration, becauſe of the deliberation and Ceremony in the confeſſion of it, and therefore in 8. *Reginæ* it is ſolemnly agreed, that in the Queenes Caſe a falſe conſideration if it bee of Record, will hurt the Patent, but want of conſideration doth never hurt it, and yet they ſay that a Caſe is but a nimble and light thing, and now contrariwiſe it ſeemeth to bee weightier then any thing elſe, for you cannot weigh it up to raiſe it, neither by deed, nor deed inrolled without the weight of conſideration, but you ſhall never find a reaſon of this, to the Worlds end, but in the Law, but it is a reaſon of *Chancery*, and it is this:

That no Court of Conſcience will enforce *Omnium gratuitum*, though the intent appeare never ſo clearely where it is not executed, or ſufficiently paſſed by Law, but if mony had beene paid, and ſo a perſon dampnified, or that it was for the eſtabliſhment of his Houſe, then it is a good matter in the *Chancery*: ſo againe I would ſee in the Lawes, a Caſe where a man ſhall take by a Conveyance, bee it by Deed, Livery, or Word that is not party to the grant, I doe not ſay that the delivery muſt be to him that takes by the Deed, for a Deed may be delivered to one man to the uſe of another;

neither

neither doe I ſay that he muſt be party to the delivery of the Deed, for he in the remainder may take though hee be not party, but he muſt be party to the words of the grant; here againe the Caſe of the uſe goeth ſingle, and the reaſon is, becauſe a conveyance in uſe is nothing but a publication of the truſt, and therefore ſo as the party truſted bee declared, it is materiall to whom the publication bee ſo much for the rayſing of uſes.

There is no Caſe in the Common Law, wherein notice ſimply and nakedly is materiall to make a Covin, or *particeps Criminis*, and therefore if the Heire which is in by diſcent, infeoffee one which had notice of the diſſeiſin, if he were not a *Diſſeiſor de facto*, it is nothing: ſo in 33. *H.* 6. if a Feoffment be made upon colluſion, and feoffee makes a feoffment over upon good conſideration, the colluſion is diſcharged, and it is not materiall if they had notice or no, ſo as it is put in 14. *H*, 8. if a ſale be made in a Market over upon conſideration, although it be to one that hath notice that they are ſtollen goods, yet the property of a Stranger is bound, though in the Booke before remembred 35. *Hen.* 6. ſome opinion to the contrary, which is clearely no Law, ſo in *E.* 3. if aſſets diſcend to the Heire, and hee alien it upon good conſideration, although it be to one that had notice of the Debt, or of the Warranty it is good enough. So if a man enter of purpoſe into my Lands, to the end that a Stranger which hath right, ſhould bring his *Præcipe* and evict the Land, I may enter notwithſtanding any ſuch recovery, but if hee enter having notice that the Stranger hath right, and the Stranger likewiſe having notice of his entry, yet if it were not upon Confederacy or colluſion betweene them it is nothing, and the reaſon of theſe Caſes is, becauſe the Common Law looketh no furtherthen to ſee whether the Act were meerely *Actus fictus in fraudem legis*, and whereſoever it findeth conſideration given it diſchargeth the covin.

But come now to the Caſe of uſe, and there it is otherwiſe, as it is in 14. *H.* 8. and 28. *H.* 8. and diverſe other Bookes,

Bookes, which prove that if the Feoffee ſell the Land for good conſideration to one that hath notice, the Purchaſer ſhall ſtand ſeized to the antient uſe, and the reaſon is becauſe the *Chancery* looketh further then the Common Law, to the corrupt Conſcience of him that will deale in the Land, knowing it in equity to bee anothers, and therefore if there were *Radix Amaritudinis*, the conſideration purgeth it not, but it is at the perill of him that giveth it, ſo that conſideration, or no conſideration is an iſſue at the Common Law, but notice on notice is an iſſue in the *Chancery*, and ſo much for the preſerving of uſes.

For the transferring of uſes there is no caſe in Law whereby an Action is transferred but the *Subpœna*, in caſe of uſe was alwayes aſſigneable, nay further you find twice 27. *H.* 8. *Fol.* 10. *Pla.* 9. *Fo.*30. and *Pla.* 21. that a right of uſe may be transferred, for in the former caſe *Montague* maketh the objection and ſaith, that a right of uſe cannot be given by Fine, but to him that hath the Poſſeſſion, *Fitz Herbert* anſwereth, Yes well enough; *quare* the reaſon ſaith the booke.

And in the latter Caſe where *Ceſty que uſe* was infeoffed by the Diſſeiſor of the Feoffee, and made a Feoffment over: *Engleſield* doubted whether the ſecond Feoffee ſhould have the uſe, *Fitz Herbert* ſaid, I marvell you will make a doubt of it, for there is no doubt but the uſe paſſeth by the Feoffment to the Stranger, and therefore this Queſtion needeth not to have beene made; ſo the great difficulty in 10. *Reginæ*, *Delamers* Caſe, where the caſe was in effect Tenant in tayle of an uſe, the remainder in Fee, Tenant in tayle made a Feoffment in Fee, Tenant, by the Statute of *I. R.* 3. and the Feoffee infeoffed him in the remainder of the uſe, who made it over, and there queſtion being made whether the ſecond Feoffee ſhould have the uſe in remainder, it is ſaid that the ſecond Feoffee muſt needs have the beſt

right in Conſcience, becauſe the firſt Feoffee claimed nothing but in truſt, and the reſt *que uſe* cannot claime it againſt h s ſale, but the reaſon is apparant (as was touched before) that a uſe in *Eſſe* was but a thing in action, or in ſuite to be brought in Court of Conſcience, and where the *Subpœna* was to be brought againſt the Feoffee out of poſſeſſion to recontinue the Eſtate, alwayes the *Subpœna* might bee transferred, for ſtill the Action at the Common Law was not ſtir'd, but remained in the Feoffee, and ſo no miſchiefe of maintenance or transferring rights.

And if a uſe being but a right may bee aſſigned, and paſs'd over to a Stranger, a *multo fortiori*, it may bee limited to a Stranger upon the privity of the firſt conveyance, as ſhall bee handled in another place, and as *Glanvile* Juſtice ſaid, hee could never find by any booke, or evidence of antiquity, a continge uſe limited over to a Stranger, I anſwer, Firſt it is no marvell that you find no Caſe before *E.* 4. time of contingent uſes, where there bee not ſixe of uſes in all, and the reaſon I doubt was, men did chooſe well whom they truſted, and truſt was well obſerved, and at this day in *Ireland*, where uſes be in practiſe, Caſes of uſes come ſeldome in queſtion, except it bee ſometimes upon the alienations of Tenants in tayle by Fine, that the Feoffees will not bee brought to execute Eſtates, to the diſ-inheritance of antient bloud, but for experience, and the conveyance there was nothing more uſuall in *Obyſts*, then to will the uſe of the Land to certaine perſons and their heires, ſo long as they ſhall pay the *Chancery* Prieſts their Wages, and in default of payment to limit the uſe over to other perſons and their Heires, and ſo in caſe of forfeiture, through many degrees, and ſuch conveyances are as antient as *R.* 2. time.

Now for determining and extinguiſhing of uſes, I put the caſe of collaterall garranty before, and to that the notable

notable caſe of 14. *H.* 8. *Hautſemmes* Caſe, where this very point was in the principall caſe, for a Rent out of Land, and the Land it ſelfe in caſe of poſſeſſion cannot ſtand together, but the rent ſhall bee extinct, but there the caſe is, that the uſe of the Land, and the uſe of the Rent ſhall ſtand well enough together, for a Rent charge was granted by the Feoffee to one, that notice of the uſe had and ruled, that the Rent was to the antient uſe, and both uſes were in *Eſſe ſimul et ſemel*, and though *Brudnell* chiefe Juſtice urged the ground of poſſeſſion to bee otherwiſe, yet he was over-ruled by the other three Juſtices, and *Brooke* ſaid unto him, he thought he argued much for his pleaſure; and to conclude, wee ſee the thing may be avoyded and determined by the Ceremonies and Acts, like unto thoſe by which are created and raiſed, that which paſſeth by Livery ought to be avoyded by entry; that which paſſeth by Grant, by claime; that which paſſeth by way of charge, determineth by way of diſcharge: and ſo a uſe which is raiſed but by a declaration or limitation, may ceaſe by words of Declaration or Limitation, as the Civill Law ſaith, in his *magis conſentaneum eſt, quàm ut iiſdem modis res diſſolvantur a quibus conſtituantur*: for the conception and progreſſion of uſes, I have for a preſident in them other Lawes, becauſe States and Common-wealths have common accidents, and I find in the Civill Law, that that which commeth neareſt in name to the uſe, is nothing like in matter, which is *Vſus fructus*, for *Vſus fructus et dominium* is with them, as with their particular tenancy and inheritance, but that which reſembleth the uſe moſt is *fidei Commiſſio*, and therefore you ſhall finde in *Ius Lib.* 2. That they had a forme in Teſtaments, to give Inheritance to one to the uſe of another. *Heredem conſtituo Cajum rogo autem te Caie, ut hereditatem reſtituas*, and the Text of the Civilians ſaith, that for a

great time if the Heire did not as he was required *Cesty que use*, had no remedy at all, untill about the time of *Augustus Cæsar*, there grew in custome a flattering forme of trust, for they penned it thus: *Rogo te per salutem Augusti*, or, *Per fortunam Augusti &c.* whereupon *Augustus* tooke the breach of trust to sound in derogation of himselfe, and made a Commission to the Prætor to give remedy in such Cases, whereupon within the space of a hundred yeares, these trusts did spring and speed so fast, as they were forced to have a particular Chancellor onely for uses, who was called *Prætor fidei Commissarius*, and long after the inconvenience of them being found, they resorted unto a Remedy much like unto this statute, for by two Decrees of Senate, called *Senatus consult. Trebosianum et Pegasianum*, they made *Cesty que use* to be Heire in substance. I have sought likewise, whether there bee any thing which maketh with them in our Law, and I finde the *Persian* chiefe Barron in the Argument of *Chudleyes* Case compareth them to Coppy-holders, and aptly for many respects.

First, because an use seemeth to bee an hereditament in the L. Court.

Secondly, this conceipt of Limitation hath beene troublesome in Coppy-holders as well as in Vses, for it hath beene of late dayes questioned, whether there should be Tenancy by the Courtesie, dis-continuances, and recoveries of Coppy-holders, in the nature of Inheritances at the Common Law, and still the judgements have weighed, that you must have particular Customes in Coppy-holds, as well as particular Reasons of Conscience in use, and the limitation recited.

And Thirdly, because they both grew to no remedy at all against the Lord, and were as tenancy at will, afterwards it grew to have remedy in *Chancery*, & afterwards against their Lords by Trespasse, at the Common-Law,

Law, and now lastly the Law is taken by some, that they have remedy by *Ejectione firma* without a speciall custome of leasing, doe no doubt in uses, at the first the *Chancery* made question to give remedy, untill uses grew more generall, and the *Chancery* more eminent, and then they grew to have remedy in Conscience, but they could never obtaine any manner of Remedy at the Common Law, neither against the Feoffee, nor against Strangers, but the Remedy against the Feoffee, was best by *Subpœna*, and the remedy against Strangers to the Feoffee.

Now for the Cases whereupon uses were but in practice, *Cooke* in his Reading doth say well, that they were produced sometimes for feare, and many times for fraud; but I hold that neither of these Cases were so much the reasons of uses, as another reason in the beginning, which was, that Lands by the Common Law of *England* were not Testamentary, or deviseable, and of late yeares since the Statute, the Case of the conveyance for sparing of Purchases, and Execution of Estates, and now last of all expresse liberty of Will in mens minds, affecting to have the assurance of their Estate, and Possession to be revokeable in their owne times, and irrevocable after their owne times.

Now for the Commencement and proceeding of them, I have considered what it hath beene in course of Common Law, and what it hath beene in course of Statute for the Common Law, the conceipt of *Shelly* in 24. *H.* 8. and of *Polard* in 27. *H.* 8. seemeth to me to bee without ground, which was, that the use succeeded the Tenure, for that the Statute of *Quia emptores terrarum*, which was made 18. *E.* 1. had taken away the Tenure betweene the Feoffer and the Feoffee, and left it to the Lord *Paramount*, they said that the Feoffment being then meerely without consideration, should therefore intend an use to the Feoffer, which cannot be, for by that

reaſon if the Feoffment before the Statute had beene made *Tenendum de Capitalibus Dominis*, as it muſt be; there ſhould have beene an Uſe unto the Feoffer before that Statute. And againe, if a Grant had beene made of ſuch things as conſiſts not in Tenure, as Advowſons, Rents, Villeins and the like, there ſhould have beene a Uſe of them, wherein the Law was quite contrary; for after the time that Uſes grew common, it was nevertheleſſe a great doubt whether things that did lye in Grant, did not carry a conſideration in themſelves becauſe of the Deed.

And therefore I do judge that the intendment of a Uſe to the Feoffer where the Feoffment was made without conſideration grew long after when Uſes waxed general; and for this reaſon, becauſe when Feoffments were made, and that it reſted doubtfull whether it were in uſe or in Purchaſe, becauſe Purchaſes were things notorious, and Uſes were things ſecret. The Chancellor thought it more convenient to put the Purchaſor to proove his conſideration, then the Feoffer and his Heires to prove the truſt, and ſo made the indentment towards the Uſe, and put the prooſe upon the Purchaſor.

And therefore as Uſes were at the Common Law in reaſon, for whatſoever is not by Statute, nor againſt Law may be ſaid to be at the Common Law, and both the generall truſt and the ſpeciall, were things not prohibited by the Law, though they were not remedied by the Law; ſo the Experience and practice of Uſes were not ancient, and my reaſons why I think ſo, are theſe.

Firſt, I cannot find in my Evidence before King *R.* 2. his time, the clauſe *ad opus et uſum*, and the very Latin phraſe was much purer, as you may ſee by *Bractons* Writing, and by ancient Patents and Deeds, and chiefly by the Regiſter of Writs, which is good Latin; wherein this phraſe (*ad opus & uſum*) and the Words (*ad opus*) is a barbarous phraſe, and like enough to be in the pennin

of ſome Chaplaine that was not much paſt his Grammer, where he had found *Opus & uſus*, coupled together, and that they did governe an Ablative caſe, as they do indeed ſince this Statute, for they take away the Land and put them into a conveyance.

Secondly, I find in no private Act of Attainder in the clauſe of Forfeiture of Lands (S) which he hath in poſſeſſion or in Uſe, untill *Ed.* 4. his Reigne.

Thirdly, I find the Word (*vſe*) in no Statute untill 7. *Rich.* 2. *cap.* 11. of Proviſoes, and in 15. *Ric.* 2. of *Mortmaine.*

Fourthly, I collect out of *Cookes* ſpeech in 8. *Edw.* 4. where he ſayth that by the advice of all the Judges, it was thought that the *Subpœna* did not lye againſt the Heire of the Feoffee which was in by Law, but *Ceſty que vſe* was driven to his Bill in Parliament, that Uſes even in that time were but in their infancy; for no doubt but at the firſt the Chancery made difficulty to give Remedy at all, but to leave it to the particular Conſcience of the Feoffee: But after the Chancery grew abſolute, as may appeare by the Statute of 15. *Hen.* 6. that complaints in Chancery ſhould enter into Bond to prove their ſuggeſtions, which ſeemeth that the Chancery at that time began to imbrace too farre, and was uſed for vexation; yet nevertheleſſe it made ſcruple to give remedy againſt the Heire being in by Act in Law though he were privy, ſo that it cannot be that Uſes had beene of any great continuance when they made a queſtion: As for the Caſe of Matrimony, *Prelomti*, it hath no affinity with Uſes, for whereſoever there was remedy at the Common-Law by Action, it cannot be intended to be of the nature of a Uſe.

And for the Booke commonly vouched of *Aſſ.* where the Earle calleth the poſſeſſion of a Conizee upon a Fine levied by conſent an entry in *Auterdroit* and 44. of *E.* 3. where

where there is mention of the Feoffors that ſued by petition to the King, they be but implications of no moment. So as it appeareth the firſt practice of Uſes was about *Richard* 2. his time, and the great multiplying and over-ſpreading of them was partly during the Wars in *France*, which drew moſt of the Nobility to be abſent from their Poſſeſſions, and partly during the time of the Trouble and Civill War betweene the two houſes about the Title of the Crowne.

1 Now to conclude the Progreſſion of Uſes in courſe of Statutes, I do note three ſpeciall points.

2 That a Uſe had never any force at all, at the Common-Law, but by Statute Law.

That there was never any Statute made directly for the benefit of *Ceſty que Vſe*, as that the Diſcent of an Uſe ſhould toll an Entry, or that a Releaſe ſhould be good to the partner of the profits or the like; but alwayes for the benefit of Strangers and other perſons againſt *Ceſty que uſe*, and his Feoffees: For though by the Statute of *Richard* 3. he might alter his Feoffees, yet that was not the ſcope of the Statute, but to make good his aſſurance to other perſons, and the other came in *Et obliquo*.

3 That the ſpeciall intent unlawfull and covenous was the Originall of Uſes, though after it induced to the lawfull intent generall and ſpeciall; For 5. *Edward* 3. is the firſt Statute I finde, wherein mention is made of the taking of profits by one, where the Eſtate in Law is another.

For as to the opinion in 27. *Henr.* 8. that in caſe of the Statute of *Marlebridge*, the Feoffors took the profits, it is but a conceite; for the Law is this day, that if a man infeoffee his Eldeſt Sonne within age, and without conſideration, although the profits be taken to the uſe of the Sonne; yet it is a Feoffment within the Statute of *Religioſis*; and as for 7. *Edward* 1. which

prohi-

prohibits generally that Religious persons should not purchase *Arte vel ingenio*, yet it maketh no mention of a Vse, but it saith, *Colore donationis termini vel alicujus tituli*, reciting there three formes of conveyances, the gift, the long Lease, and faigned Recovery, which gift cannot bee understood of a gift to a Stranger to their use, for that came to be holpen by 15: *Richard* 2. long after, but to proceed in 5. *Edward* 3. a Statute was made for the reliefe of Creditors against such as made covin gifts of their Lands, and goods, and conveyed their bodies into Sanctuaries, there living high upon others goods, and therefore that Statute made their Lands liable to their Creditors Executions in that particular Case, if they tooke the profits: In 5. *Richard* 2. a Statute was made for relieſe of those as had right of Action, against those as had renounced the tenancy of the *Præcipe* from them, sometimes by infeoffing great persons, for maintenance, and sometimes by secret Feoffments to others, whereof the Defendants could have no notice, and therefore the Statute maketh the recovery good in all Actions against the first Feoffees as they tooke the profits, and see that the Defendants bring their Action within a yeare at their expulsion 2. *Richard* 2. *Cap.* 3. *Session* 2. an imperfection of the Statute of 50. *Edward* 3. was holpen, for whereas the statute tooke no place, but where the Defendant appeared, and so was frustrated, the Statute giveth upon Proclamation, made at the Gate of the place priviledged, that the Land should be liable without apparance, in 7. *R.* 2.

A Statute was made for the restraint of Aliens, to take thy Benefices, or dignities Ecclesiasticall, or Farmes of Administration to them, without the Kings speciall Lycence, upon paine of the Statute of Provisors, which being remedied by a former Statute, where the Alien tooke it to his owne use: it is by that Statute remedied, where the Alien tooke it to the use of another, as it is

ſaid in the Booke, though I gheſſe, that if the Record were ſearched, it ſhould be if any other purchaſed to the uſe of an Alien, and that the words (or to the uſe of another) ſhould be (or any other to his uſe) 15. *Rich.* 2. *Cap.* 5. a Statute was made for the relieſe of Lords againſt *Mortmayne*, where Feoffments were made to the uſe of Corporations, and an Ordinance made that for Feoffments paſt, the Feoffees ſhould before a day, either purchaſe Lycence to amortiſe them, or alien them to ſome other uſe, or other Feotfments to come, they ſhould bee within the Statute of *Mortmayne*, 4. *Hen.* 4. *Cap.* 7. the Statute of 17. *Richard* 2. is inlarged in the limitation of time, for whereas the ſtatute did limit the Action to be brought within the yeare of the Feoffment: This Statute in Caſe of a Diſſeiſin extends the time to the life of the Diſſeiſor, and in all other Actions, leaves it to the yeares, from the time of the Action growne 11. *Henry* 6. *Cap.* 3. that Statute of 4. *Henry* 4, is declared, becauſe the conceipt was upon the Statute, that in Caſe of Diſſeiſin the limitation of the life of the Diſſeiſor went onely to the aſſiſe of *Non et diſſeiſin*, and to no other Action, and therefore that Statute declareth the former Law to extend to all other Actions, grounded upon *Novel diſſeiſin* 11. *Henry* 6. *Cap.* 5. A Statute was made for relieſe of him in remainder againſt particular Tenants, for Lives, or yeares, that Aſſigned over their Eſtates, and tooke the profits, and then committed waſt againſt them, therefore this Statute giveth an Action of waſt, being proviſors of the profits, in all this courſe of Statutes no relieſe is given to Purchaſors, that come in by the party, but to ſuch as come in by Law, as Defendants in *Precipes*, whether they be Creditors, Diſſeiſors, or Leſſors, and that onely of *Mortmayne*, and note alſo that they be all in Caſes of ſpeciall Covenous intents, as to defeate Executions, tenancy to the *Precipe*, and the Statute of *Mortmayne*,

as

as Proviſors from 11. *Henry* 6. to 1. *R.* 3. being the ſpace of fifty yeares, there is a ſilence of Vſes in the Statute Booke, which was at that time when no queſtion they were favoured moſt, in 1. *Richard* 3. *Cap.* 1. commeth the great Statute for reliefe of thoſe that come in by the party, and at that time an uſe appeareth in his likeneſſe, for there is not a word ſpoken of taking the profits, to deſcribe a uſe by, but of clayming to a uſe, and this Statute ordayned that all Gifts, Feoffments, Grants, &c. ſhall be good againſt the Feoffors, Dowers and Grantors, and all other perſons clayming onely to their uſe, ſo as here the Purchaſor was fully relieved, and *Ceſty que uſe* was *obiter* enabled to charge his Feoffees, becauſe there were no words in the Satute of Feoffments, Grants, &c. upon good conſideration, but generally in *Henry* 7. time, new Statutes were made for further helpe and remedy to thoſe that came in by Act in Law, as firſt 11. *Henry* 7. *Cap.* 1. 2 *Formedon* is given without limitation of time againſt *Ceſty que uſe*, and *obiter*, becauſe they make him a Tenent, they give him advantage of a Tenant, as of age, and voucher, *quære* 4. *Henry* 7. 17. the Ward-ſhip of the Heire of *Ceſty que uſe*, is dying, and no Will declared is given to the Lord, as if he had dyed ſeiſed in Demeaſne, and Action of waſt given to the Heire againſt the Gardian, and dammages, if the Lord were barr'd in his writ of Ward, and reliefe is likewiſe given unto the Lord, if the heire holding the Knights ſervice, be of full age 19. *Henry* 7. *Cap.* 5. there is reliefe given in three Caſes, firſt to the Creditors upon matters of Record, as upon Recognizance, Statute, or Judgement, whereof the two former were not ayded at all by any Statute, and the laſt was ayded by a Statute of 50. *E.* 3. and 2. *Richard* 2. oneſly in Caſe of Sanctuary men. Secondly, to the Lords in ſoccage for their reliefe, and Herriots upon death, which was omitted in the 4. *Henry* 7. and laſtly to the Lords

of Villeyns, upon a purchaſe of their Villeyns in uſe, 13. *Henry* 8. *Cap.* 10. a further Remedy was given in a Caſe, like unto the caſe of *Mortmayne*, for in the Statute of 15. *Richard* 2. remedy was given where the uſe came, *Ad manum mortuam*, which was when it came to ſome Corporation: now when uſes were limited to a thing, Act, or worke, and to a body, as to the reparation of a Church, or an Abbot, or to a guild, or Fraternities, as are onely in reputation, but not incorporate, as to Pariſhes, or ſuch guilds or Fraternities as are onely in reputation, but not incorporate that Caſe was omitted, which by this Statute is remedied, not by way of giving entry unto the Lord, but by way of making the uſe utterly voyd, neither doth the Statute expreſſe to whoſe benefit the uſe ſhall be made voyd, either the Feoffor, or Feoffee but leaveth it to Law, and addeth a Proviſoe, that uſes may bee limited twenty yeares from the gift, and no longer.

This is the whole courſe of Statute Law before this Statute, touching Uſes, thus have I ſet forth unto you the nature and definition of an Vſe, the differences and truſt of an Vſe and the parts and qualities of it, and by what Rules and termings Uſes ſhall bee guided and ordered, by a Preſident of them in our Lawes, the cauſes of the ſpringing and ſpreading of Uſes, the continuance of them, and the proceedings that they have had both in Common Law, and Statute Law, whereby it may appeare, that a Vſe is no more but a generall truſt, when any one will truſt the Conſcience of another better then his owne Eſtate and Poſſeſſion, which is accident or event of humane Society, which hath bin, and will be in all Lawes, and therefore was at the Common Law, which is common reaſon. *Fitz Herbert* ſaith in the 14. *Henry* 8. common reaſon is Common Law, and not Conſcience; but common reaſons doth define that Uſes ſhould be remedied in Conſcience, and not in Courts of Law,

Law, and ordered by Rules in Conſcience, and not by ſtreight Rules of Law; for the Common Law hath a kind of a Rule and ſurvey over the *Chancery*, and therefore we may truely conclude, that the force and ſtrength that a Vſe had or hath in Conſcience, is by Common Law, and the force that it had or hath by Common Law is onely by Statutes.

Now followeth in time and matter, the conſideration of this Statute of principall labour, for thoſe former conſiderations which wee have handled ſerve but for introduction.

This Statute (as it is the Statute which of all other hath the greateſt power and operation over the Heritages of the Realme, ſo howſoever it hath beene by the humour of the time perverted in expoſition, yet in it ſelfe is moſt perfectly and exactly conceived and penned of any Law in the Booke, induced with the moſt declaring and perſwading Preamble, conſiſting and ſtanding upon the wiſeſt and fitteſt Ordinances, and qualified with the moſt fore-ſeeing and circumſpect ſavings and promiſes, and laſtly the pondred in all the words and clauſes of it of any Statute that I find, but before I come to the Statute it ſelfe, I will note unto you three matters of Circumſtance.

The time of the Statute. 1.
The Title of it. 2.
The Preſident or patterne of it. 3.

For the time of it was in 27. *Henry* 8. when the King was in full peace, and a wealthy and flouriſhing Eſtate, in which nature of time men are moſt carefull of their Poſſeſſions, aſwell becauſe Purchaſes are moſt ſtirring; as againe, becauſe the Purchaſor when hee is full, is no leſſe carefull of his aſſurance to his Children, and

of diſpoſing that which he hath gotten, then hee was of his bargaine for the compaſſing thereof.

About that time the Realme likewiſe began to be infranchiſed from the Tributes of *Rome*, and the Poſſeſſions that had beene in *Mortmayne* began to ſtirre abroad, for this yeare was the ſuppreſſion of the ſmaller Houſes of Religion, all tending to plenty, and purchaſing, and this Statute came in conſort with divers excellent Statutes, made for the Kingdome in the ſame Parliament, as the reduction of *Wales* to a more civill Government, the re-edifying of diverſe Cities and Townes, the ſuppreſſing of depopulation and incloſures.

For the Title, it hath one Title in the Role, and another in courſe of Pleading, the Title in the Role is no ſolemne Title, but an Act title (5) an Act expreſſing an Order for Uſes and Will, the Title in courſe of Pleading is, *Statutum de uſibus, in Poſſeſſionem transferendis*, wherein *Walmſly Juſtice* noted well 4. *Reginæ*, that if a man looke to the working of the Statute, hee would thinke that it ſhould be turned the other way, *De poſſeſſionibus ad uſus transferendis*, for that is the courſe of the Statute, to bring Poſſeſſion to the Vſe, but the Title is framed not according to the worke of the Statute, but according to the ſcope and intention of the Statute. *Nam quod primum eſt in intentione, ultimum eſt in operatione*, the intention of the Statute by carrying the Poſſeſſion to the uſe, is to turne the uſe to a Poſſeſſion, for the words are not *De poſſeſſionibus ad uſus transferendis*, and as the Grammarian ſaith, *Præpoſitio ad, denotat notam actionis, ſed prepoſitio (in) cum Accuſativo denotat notam alterationis*, and therefore *Kingſmill* Juſtice in the ſame Caſe ſaith, that the meaning of the Statute was, to make a tranſſubſtantiation of the uſe unto a Poſſeſſion; but it is to be noted, that Titles of Acts of Parliament, ſeverally came in, but in the 5. *Henry* 8. for before that time that was but one Title of all the Acts made

made in one Parliament, and that was no Title neither, but a generall Preface of the good intent of the King, but now it is parcell of the Record.

For the Preſident of this Statute upon which it is drawne, I doe finde by the firſt *Richard* 3. whereupon you may ſee the very mould whereon this Statute was made, that the ſaid King having beene infeoffed (before he uſurped) to Uſes, as it was ordained that the Land whereof he was joyntly infeoffed as if hee had not beene named, and where he was ſolely infeoffed, it ſhould bee in *Ceſty que uſe*, in Eſtate as he had the uſe.

Now to come to the Statute it ſelfe, the Statute conſiſteth as other Lawes doe upon a Preamble, the Body of the Law, and certaine ſaving, and Premiſſes. The Preamble ſetteth forth the inconveniences, the Body of the Law giveth the Remedy, and the ſavings and Proviſoes take away the inconveniences of the remedy; for new Lands are like the Apothecaries Druggs, though they remedy the Diſeaſe, yet they trouble the body, and therefore they uſe to correct with Spices, ſo it is not poſſible to find a Remedy for any miſchiefe in the Common Wealth, but it will beget ſome new miſchiefe, and therefore they ſpice their Lawes with Proviſoes to correct and qualifie them.

The Preamble of the Law was juſtly commended by *Popham* chiefe Juſtice in 36. *Reginæ*, where hee ſaith, that there is little need to ſearch and collect out of Caſes before the ſtatute, what the miſchiefe was, which the ſcope of the Statute was to redreſſe, becauſe there is a ſhorter way offered us, by the ſufficiency and fulneſſe of the Preamble, and therefore it is good to conſider it, and ponder it throughly.

The Preamble hath three parts.

First a recitall of the principall inconveniences, which is the root of all the reſt. 1.

Secondly,

2. Secondly, an ennumeration of diverſe particular inconveniences as branches of the former.

3. Thirdly, a taſte or briefe note of the remedy that the Statute meaneth to apply; the principall inconvenience which is *Radix omnium malorum*, is the directing from the grounds and principalls of the Common Law, by inventing a meane to transfer Lands and Inheritances without any ſolemnity, or Act notorious, ſo as the whole Statute is to be expounded ſtrongly towards the extinguiſhment of all conveyances, whereby the Free hold, or Inheritance may paſſe without any new confections of Deeds, Executions of Eſtate or entryes, except it bee where the Eſtate is of privity and dependance one towards the other, in which Caſes *Mutatis mutandis*, they might paſſe by the Rules of the Common Law.

The particular inconveniences by the Law rehearſed may be reduced into foure heads.

1. Firſt, that theſe conveyances in uſe are weake for conſideration.

2. Secondly, that they are obſcure and doubtfull for tryall.

3. Thirdly, that they are dangerous for want of notice and publication.

4. Fourthly, that they are exempted from all ſuch Titles as the Law ſubjecteth Poſſeſſions unto.

The firſt inconvenience lighteth upon Heires.

The ſecond upon Jurors and Witneſſes.

The third upon Purchaſors.

The fourth upon ſuch as come in by gift in Law.

All which are perſons that the Law doth principally reſpect and favour.

For the firſt of theſe are three impediments (to the judgement of man) in diſpoſing juſtly and adviſedly of his Eſtate. (5)

Firſt

Firſt, trouble of mind. 1.
Secondly, want of time. 2.
Thirdly, of wiſe and faithfull Counſell about him. 3.

And all theſe three the Statute did finde to bee in the diſpoſition of an Uſe by Will, whereof followed the unjuſt diſ-inheresin of Heires, now the favour of Law unto Heires appeareth in many parts of the Law, as the Law of diſcent priviledgeth the Poſſeſſion of the Heire, againſt the entry of him that hath right by the Law, no man ſhall warrant againſt his Heire, except he warrant againſt himſelfe, and diverſe other Caſes too long to ſtand upon, and wee ſee the antient Law in *Glanvills* time was, that the Anceſtor could not diſ-inherit his Heire by Grant, or other Act executed in time of ſickneſſe, neither could he alien Land which had diſcended unto him, except it were for conſideration of mony or ſervice, but not to advance any younger Brother without the conſent of the Heire.

For tryalls, no Law ever tooke a ſtreighter courſe, that Evidence ſhould not be perplexed, nor Juries inveigled, then the Common Law of *England*, as on the other ſide, never Law tooke a more preciſe and ſtraight courſe with Juries, that they ſhould give a direct verdict, for whereas in manner all Lawes doe give the Tryers, or Jurors (which in other Lawes are called Judges *De facto*) to give no liquet, that is, to give no verdict at all, and ſo the Caſe to ſtand abated; our Law enforceth them to a direct verdict, generall or ſpeciall, and whereas other Lawes except of Plurality of voyces, to make a verdict, our Law enforceth them all to agree in one, and whereas other Lawes leave them to their owne time and eaſe, and to part, and to meete againe; our Law dureſſe and impriſon them in the hardeſt manner, without light or comfort, untill they bee agreed, in conſideration of ſtraightneſſe and coherſion; it

is conſonant, that the Law doe require in all matters brought to iſſue, that there be full proofe and evidence, and therefore if the matter in it ſelfe bee of that ſurety as in ſimple Contracts, which are made by paroll, without writing, it alloweth wager of Law.

In iſſue upon the meere right (which is a thing hardly to diſcerne (it alloweth wager of Battaile to ſpare Jurors, if time have wore out the markes and badges of truth: from time to time there have beene Statutes of limitation, where you ſhall find this miſchiefe of Perjuries often recited; and laſtly which is the matter in hand, all Inheritances could not paſſe but by Acts overt and notorious, as by Deeds, Livery, and Records.

For Purchaſors (*Bona fide*) it may appeare that they were ever favoured in our Law, as firſt by the great favour of Warranties, which were ever for the helpe of Purchaſors, as whereby the Law in 5. *Edw.* 3. time, the Diſſeiſor could not enter upon the Feoffee in regard of the Warranty, ſo againe the Collaterall garranty which otherwiſe as a hard Law, grew in doubt onely upon favour of Purchaſors, ſo was the binding of Fines at the Common Law, the invention and practice of Recoveries, to defeate the Statute of intayles, and many more grounds and learnings are to bee found, reſpect the quiet of the Poſſeſſion of Purchaſors, and therefore though the Statute of 1 *Richard* 3. had provided for the Purchaſor in ſome ſort; by enabling the Acts and conveyances of *Ceſty que uſe*, yet nevertheleſſe the State did not at all diſable the Acts or charges of the Feoffees, and ſo as *Walmeſly* Juſtice ſaid 42. *Regina*, they played at double hand, for *Ceſty que uſe* might ſell, and the Feoffee might ſell, which was a very great uncertainty to the Purchaſor.

For the fourth Inconvenience towards thoſe that come in by Law, conveyances in Uſes were like priviledge

ledge places or liberties, for as there the Law doth not run, ſo upon ſuch conveyances the Law could take no hold, but they were exempted from all Titles in Law, no man is ſo abſolute Owner of his Poſſeſſions, but that the wiſedome of the Law doth reſerve certaine Titles unto others, and ſuch perſons come not in by the pleaſure and diſpoſition of the party, but by the Juſtice and conſideration of Law, and therefore of all others they are moſt favour'd, and alſo they are principally three.

The Kings and Lords who loſt the benefit of Attaindors, Fines for alienations, Eſcheates, Aydes, Herreots, Reliefes, &c. 1.

The Defendants in *Præcipes* either reall or perſonall, for Debt and Damages, who loſt the benefit of their Recoveries and Executions. 2.

Tenants in Dower, and by the Curteſie, who loſt their Eſtates and Tythes. 3.

Firſt for the King, no Law doth endow the King or Soveraigne with more from Suites and Actions, his Poſſeſſions from interuption and diſturbance, his Right from limitation of time, his Pattents and Gifts from all deceites and falſe ſuggeſtions: Next the King is the Lord, whoſe duties and rights the Law doth much favour, becauſe the Law ſuppoſeth the Land did Originally come from him, for untill the Statute of *Quia emptores terrarum*, the Lords was not forced to diſtruct or diſmember his Signiory or ſervice, ſo untill 15. *Henry* 7. the Law was taken that the Lord upon his Title of Wardſhip ſhould be put to a conizee of a Statute. or a Termor, ſo againe we ſee, that the Statute of *Mortmaine* was made to preſerve the Lords Eſcheats and Wards: the Tenant in Dower is ſo much favoured, as that it is the common by word in the Law, that the Law favoureth three things.

1. Life.
2. Liberty.
3. Dower.

So in Caſe of Voucher, the Feme ſhall not be delayed, but ſhall recover againſt the Heire incontinent; ſo likewiſe of Tenant by courteſie it is called Tenancy by the Law of *England*, and therefore ſpecially favoured, as a proper conceipt and invention of our Law, ſo as againe the Law doth favour ſuch, as have antient Rights, and therefore it telleth us it is commonly ſaid, that a Right cannot dye: and that ground of Law, that a Free hold cannot bee in ſuſpence ſheweth it well, inſomuch that the Law will rather give the Land to the firſt commer, which we call an Occupant, then want a Tenant to a Strangers Action.

And againe, the other ancient ground of Law of Remitter, ſheweth that where the Tenant faileth without folly in the Defendant, the Law executeth the antient Right: To conclude therefore this point, when this practice of Feoffments in uſe did prejudice and dampnifie all thoſe perſons that the antient Common Law favour'd, and did abſolutely croſſe the wiſedome of the Law, to have conveyances conſiderate, and not odious, and to have Tryall thereupon cleare and not inveighed, it is no marvaile that the Statute concludeth, that their ſubtile imaginations and abuſes, tended to the utter ſubverſion of the ancient Common Lawes of this Realme.

The third part of the Preamble giveth a touch of the Remedy which the Statute intendeth to miniſter, conſiſting in two parts.

1. Firſt, the expiration of Feoffments.
2. Secondly, the taking away of the hurt, damage, and deceipt of the Uſes, out of which have bin gathered two extremities of opinions.

The

The first Opinion is, that the intention of the Statute was to discontinue, and banish all conveyances in Use, grounding themselves both upon the words, that the Statute doth not speake of the extinguishment or extirpation of the Use *viz.* by an unity of Possession, but of an extinguishment or extirpation of the Feoffment &c. which is the conveyance it selfe.

Secondly, out of the words (abuse and errours) heretofore used and accustomed; as if Uses had not beene at the Common Law, but had onely an erroneous device or practice.

To both which I answer.

To the former, that the extirpation which the Statute meant was plaine, to bee of the Feoffees Estate, and not to the forme of conveyances.

To the latter I say, that for words (Abuse) that may bee an abuse of the Law which is not against Law, as the taking long Leases at this day of Land in *Capite*, to defraud Wardships is an abuse of the Law, which is not against Law, and by the words (Errour) the Statute meant by it, not a mistaking of the Law, but wandring or going astray or digressing from the antient practice of the Law unto a buy course, as when we say (*Erravimus cum patribus juris*) it is not meant of ignorance onely, but of perversity, but to prove that the Statute meant not to suppresse the forme of conveyances, there be 3. Reasons which are not answerable.

The first is, that the Statute in the very Branch thereof hath words, *De futuro* (s.) (that are seised, or hereafter shall be seised) and whereas it may be said that these words were put in, in regard of Uses suspended, by disseisins, and so no present seisin to the use,

untill a regreſſe of the Feoffees, that intendment is very particular, for commonly ſuch Caſes are brought in by Proviſoes, or ſpeciall Branches, and not intermixed in the body of a Statute, and it had beene eaſie for the Statute to have, or hereafter ſhall be ſeiſed upon any Feoffment &c. heretofore had or made.

The ſecond Reaſon is upon the words of the Statute of Inrolements, which ſaith, that no hereditaments ſhall paſſe, &c. of any Uſe thereof, &c. whereby it is manifeſt, that the Statute meant to leave the forme of conveyance with the addition of a further Ceremony.

The third Reaſon I make is out of the words of the Proviſor, where it is ſaid, that no primer Seiſin, Livery, no Fine, nor Alienation, ſhall bee taken for any Eſtate executed, by force of the Statute of 27. before the firſt of *May* 1536. but they ſhall be paid for Uſes, made and executed in Poſſeſſion for the time after, where the word (made) directly goeth to conveyances in uſe, made after the Statute, and can have no other underſtanding for the words (executed in Poſſeſſion) would have ſerved for the Caſe of regreſſe, and laſtly which is more then all, if they have had any ſuch intent, the Caſe being ſo generall and ſo plaine, they would have had words expreſſe, that every Imitation of uſe made after the Statute, ſhould have beene voyd, and this was the Expoſition, as tradition goeth, that a Reader of *Grayes Inne*, which Read ſoone after the Statute, was in trouble for, and worthily, who as I ſuppoſe was Boy, whoſe Reading I could never ſee; but I doe now inſiſt upon it, becauſe now againe ſome in an immoderate invective againſt Uſes, doe relaps to the ſame opinion.

The ſecond Opinion which I called a contrary extremity is, that the Statute meant onely to remedy the miſchiefes in the Preamble, recited as they grew by reaſon of divided Uſes; and although the like miſchiefe may grow upon the contingent Uſes, yet the Statute had no

fore-

fore-ſight of them at that time, and ſo it was meerely a new Caſe not compriſed. Whereunto I anſwer, that it is the worke of the Statute to execute the divided Uſe, and therefore to make an Uſe voyd by this Statute which was good before, though it doth participate of the miſchiefe recited in the Statute, where to make a Law upon a Preamble without a perview, which were groſly abſurd. But upon the queſtion what Uſes are executed, and what not; and whether out of Poſſeſſions of a diſſeiſor, or other Poſſeſſions out of privity or not, there you ſhall guide your Expoſition according to the Preamble, as ſhall be handled in my next dayes Diſcourſe, and ſo much touching the Preamble of this Law.

For the Body of the Law, I would wiſh all Readers that expound Statutes, to doe as Schollers are willed to doe, that is, firſt to ſeeke out the principall Verbe, that is to note and ſingle out the materiall words, whereupon the Statute is framed, for there are in every Statute certaine words, which are as veines where the life and bloud of the Statute commeth, and where all doubts doe ariſe, and the reſt are *Literæ mortuæ* fulfilling words.

The Body of the Statute conſiſteth upon two Parts.

Firſt, a Suppoſition, or Caſe put, as *Anderſon* 361. *Reginæ* calleth it.

Secondly, a Perview or Ordinance thereupon.

The Caſes of the Statute are three and every one hath his purview.

The generall Caſe.

The Caſe of Cofeoffees to the uſe of ſome of them.

And the generall Caſe of Feoffees to the Uſe or percemans of Rents or profits.

The generall Caſe is built upon Eight materiall words.

Foure on the part of the Feoffees.

Three

Three on the part of *Ceſty que uſe*, and one common to them both.

The firſt materiall word on the part of the Feoffees is the word (Perſon) This excludes all aliances, for there can be no truſt repos'd but in a perſon certaine, it excludes againe all Corporations, for they are evalled to a Uſe certaine, for note on the part of the Feoffer over the Statute inſiſts upon the word (Perſon) and in the part of *Ceſty que uſe*, that added body Politique.

The ſecond word materiall is the word (Seis'd) this excludes Chattells, the reaſon is, that the Statute meant to remit the Common Law, and not the Chattells might ever paſſe by Teſtament or by paroll, therefore the Uſe did not pervert them, it excludes Rights, for it is againſt the Rules of the Common Law to Grant, or Transferre Rights, and therefore the Statute would execute them.

Thirdly, it excludes contingent Uſes, becauſe the ſeiſin cannot be but to a Fee-ſimple of a Uſe, and when that is limited, the ſeiſin of the Feoffee is ſpent, for *Littleton* tells us that there are but two ſeiſins, one in *Dominio ut de feodo*, the other *Vt de feodo et jure*, and the Feoffee by the Common Law could execute, but the Fee-ſimple to Uſes preſent, and not Poſt Uſes, and therefore the Statute meant not to execute them.

The third materiall word is (Hereafter) that bringeth in Conveyances made after the Statute, it brings in againe conveyances made before, and diſturb'd by diſſeiſin, and recontinued after, for it is not ſaid inſeofted to Uſe hereafter ſeis'd.

The fourth word is (Hereditament) which is to be underſtood of thoſe things whereof an Inheritance is in *Eſſe*, for if I grant a Rent charge *de novo* for life to a Uſe, this is good enough, yet there is no Inheritance in being of this Rent, this word likewiſe excludes Annuities and Uſes themſelves, ſo that a Uſe cannot be to a uſe.

The

The firſt word on the part of *Ceſty que uſe*, is the word (Uſe, Confidence or Truſt) whereby it is plaine that the Statute meant to remedy the matter, and not words, and in all the Clauſes it ſtill carrieth the words.

The ſecond word is the word (Perſon) againe which excludeth all aliances, it excludeth alſo alldent Uſes which are not to Bodies, lively and naturall, as the building of a Church, the making of a Bridge, but here (as noted before) it is ever coupled with body Politicke.

The third word is the word (Other) for the Statute meant not to croſſe the Common Law, now at this time Uſes were growne to ſuch a familiarity, as men could not thinke of Poſſeſſion, but in courſe of Uſe, and ſo every man was ſeiſed to his owne Uſe, as well as to the Uſe of others, therefore becauſe Statutes would not ſtirre nor turmoyle poſſeſſions ſetled at the Common Law, it putteth in preciſely this word (Other) meaning the divided Uſe, and not the communed Uſe, and this cauſeth the Clauſe of joynt Feoffees to follow in a branch by it ſelfe, for elſe that Caſe had beene doubtfull upon this word (Other.)

The words that are common to both, are words expreſſing the conveyance whereby the Uſe ariſeth, of which words, thoſe that bred any queſtion are (Agreement, Will, otherwiſe) whereby ſome have inferred that Uſes might be raiſed by agreement paroll, ſo there were a conſideration of mony, or other matter valuable, for it is expreſſed in the words before (Bargaines, Sale, and Contract) but of bloud, or linned; the errour of which Collection appeareth in the word immediately following (s. Will) whereby they might aſwell include, that a man ſeiſed of Land might raiſe an Uſe by Will, eſpecially to any of his Sonnes or Kindred, where there is a reall conſideration, and by that reaſon meane betwixt this Statute, and the Statute of 32.

of Wills, Lands, were devizeable, especially to any mans Kindred, which was clearely otherwise, and therefore those words were put in, not in regard of Uses raised by those conveniences, or without, or likewise by Will might be transferred, and there was a person seised to a Use, by force of that agreement or Will (s.) to the Use of the Assigne, and for the word (Otherwise) it should by the generality of the word, include a Disseisin to a Use, but the whole scope of the Statute crosseth that which was to execute such Uses as were confidences and trust, which could not be in Case of Disseisin, for if there were a commandment precedent, then the Land was vested in *Cesty que use* upon the entry, and if the Disseisin were of the Disseisors owne head then no trust, and thus much for the case of Supposition of this Statute, here follow the ordinance and purview thereupon.

The Purview hath two parts, the first *Operatio Statuti*, the effect that the Statute worketh, and there is *Modus operandi*, a fiction, or explanation how the Statute doth worke that effect. The effect is, that *Cesty que use* shall be in possession of like Estate as he hath in the Use, the fiction *quomodo* is, that the Statute will have the Possession of *Cesty que use*, as a new body compounded of matter and forme, and that the Feoffees shall give matter and substance, and the Use shall give forme and quality, the materiall words in the first part of the purview are foure.

The first words are (Remainder) and Reverture, the Statute having spoken before of Uses in Fee-simple, in Tayle, for life, or yeares addeth, or otherwise (in Remainder reverture) whereby it is manifest, that the first words are to be understood of Uses in Possession, for there are two substantiall and essentiall differences of Estates, the one limiting the times, (for all Estates are but times of their continuances) the former maketh little difference of Fee-simple, Fee Tayle for life or yeares, and the

the other maketh difference of Poſſeſſion as remainder, all other differences of Eſtate are but accidents, as ſhall be ſaid hereafter, theſe two the Statute meant to take hold of, and at the words, Remainder, and Reverture it ſtopps, it addes not wordes, (Right, Title, or poſſibility) nor it hath not generall words (or otherwiſe) it is moſt plaine, that the Statute meant to execute no inferiour Uſes to Remainder or Reverture, that is to ſay, no poſſibility or contingences, but Eſtates, onely, ſuch as the Feoffees might have executed by Conſcience made: note alſo the very Letter of the Statute doth take notice of a difference betweene an Uſe in Remainder, and an Uſe in Reverture, which though it cannot properly, becauſe it doth not depend upon particular Eſtates, as Remainders doe, neither did then before the Statute draw any Tenures as Reverſions doe, yet the Statute intends that there is a difference when the particular Uſe, and the Uſe limited upon the particular Uſe are both new Uſes, in which Caſe it is a Uſe in Remainder, and where the particular Uſe is a new Uſe, and the remnant of the uſe is the old uſe, in which Caſe it is a uſe in Reverter.

The next materiall word is (from henceforth) which doth exclude all conceipt of relation that *Ceſty que uſe* ſhall not come in, as from the time of the firſt Feoffments, to uſe as *Bradnells* conceipt was in 14. *Henry* 8. that is, the Feoffee had granted a Rent charge, and *Ceſty que uſe* had made a Feoffment in Fee, by the Statute of 1. *Richard* 3. the Feoffee ſhould have held it diſcharged, becauſe the Act of *Ceſty que uſe* ſhall put the Feoffee in, as if *Ceſty que uſe* had beene ſeiſed in from the time of the firſt Uſe limited, and therefore the Statute doth take away all ſuch ambiguities, and expreſſeth that *Ceſty que uſe* ſhall bee in Poſſeſſion from henceforth,

that is, from the time of the Parliament for Uſes then in being, and from the time of the execution for Uſes limited after the Parliament.

The third materiall words are (Lawfull ſeiſin ſtate and Poſſeſſion) not a Poſſeſſion in Law onely, but a ſeiſin in Tayle, not a Title to enter into the Land, but an actuall eſtate.

The fourth words are of and in ſuch Eſtates as they had in the Uſe; that is to ſay, little Eſtates, Fee-ſimple, Fee Tayle, life for yeares at Will and Poſſeſſion, and Reverſion, which are the ſubſtantiall differences of Eſtates, as was ſaid before; but both their latter Clauſes are more fully perfected and expounded, by the branch of the fiction of the Statute which followes.

This branch of Fiction hath three materiall words or Clauſes: the firſt materiall Clauſe is, that the Eſtate, Right, Title, and Poſſeſſion that was in ſuch perſon &c. ſhall bee in *Ceſty que uſe*, for that the matter and ſubſtance of the Eſtate of *Ceſty que uſe* is the Eſtate of the Feoffee; and more hee cannot have, ſo as if the Uſe were limited to *Ceſty que uſe* and his Heires, and the Eſtate out of which it was limited was but an Eſtate for life, *Ceſty que uſe* can have no Inheritance ſo if when the Statute came the Heire of the Feoffee had not entred after the death of his Anceſtor, but had onely a Poſſeſſion in Law, *Ceſty que uſe* in that Caſe ſhould not bring an Aſſize before entry, becauſe the Heire of the Feoffee could not, ſo that the matter whereupon the Uſe muſt work is the Feoffees Eſtate: but note here, whereas before when the Statute ſpeakes of the Uſes, it ſpake onely of Uſes in Poſſeſſion, Remainder and Treverter, but not in Title or Right, now when the Statute ſpeakes what ſhall bee taken from the Feoffee, it ſpeakes of Title and Right, ſo that the Statute takes

more

more from the Feoffee then it executes preſently in Caſe, where there are uſes in contingence which are but Titles.

The ſecond word is (Cleerely) which ſeemes properly and directly to meet with the conceipt of *Scintilla Iuris* as well as the words in the Preamble of extirping and extinguiſhing ſuch Feoffments, ſo is their Eſtates is clearely extinct.

The third materiall Clauſe is after ſuch quality, manners, forme and condition as they had in the Vſe; ſo as now as the Feoffees Eſtate gives matter, ſo the Vſe gives forme; and as in the firſt Clauſe the Vſe was indowed with the Poſſeſſion in points of Eſtate, ſo there it is indowed with the Poſſeſſion in all accidents and Circumſtances of Eſtate, wherein firſt note that it is groſſe and abſurd to expound the forme of the Vſe any whit to deſtroy the ſubſtance of the Eſtate as to make a doubt, (becauſe the uſe gave no Dower or Tenancy by the courteſie) that therefore the Poſſeſſion when it is transferred would doe ſo likewiſe: no, but the Statute meant ſuch quality, manner, forme and condition, as it is not repugnant to the corporall preſence and poſſeſſion of the Eſtate.

Next for the word (Condition) I doe not hold it to be put in for Uſes upon condition, though it be alſo comprized within the generall words, but becauſe I would have things ſtood upon learnedly, and according to the true ſence, I hold it but for an explaining or word of the effect, as it is in the Statute of 26. of *Treaſons*, where it is ſaid, that the Offender ſhall be attainded of the evert Fact by men of their condition (in this place) that is to ſay, of their degree or ſort, and ſo the word Condition in this place is no more, but in like quality, manner, forme, and degree or ſort, ſo as all theſe words amount, but to (*modo et forma.*) Hence therefore all circumſtances of Eſtate are comprehended as ſole ſeiſin, or

joyntly ſeiſin, by intierties, or by moyties, a circumſtance of Eſtate to have age as comming in by Diſcent, or not age as Purchaſor, or circumſtance of Eſtate diſcendable to the Heire of the part of the Father, or of the part of the Mother. A circumſtance of Eſtate conditionall or abſolute, remitted or not remitted with a condition of inter-marriage, or without all theſe are accidents and circumſtances of Eſtate, in all which the Poſſeſſion ſhall enſue the nature and quality of the Uſe, and this much of the firſt Caſe which is the generall caſe.

The ſecond Caſe of the joynt Feoffees needs no Expoſition, for it peruſeth the penning of the generall caſe, onely this I will note, that although it had beene omitted, yet the Law upon the firſt Caſe would have beene taken as the caſe provided, ſo that it rather in explanation than an addition, for turne that Caſe the other way, that one were infeoffed to the Uſe of himſelfe, I hold the Law to bee, that in the former Caſe they ſhall bee ſeiſed joyntly, and ſo in the latter Caſe *Ceſty que uſe* ſhall be ſeiſed ſolely: for the word (Other) it ſhall bee qualified by the conſtruction of Caſes, as ſhall appeare when I come to my Diviſion; but becauſe this Caſe of Cofeoffees to the uſe of one of them was a generall Caſe in the Realme, therefore they fore-ſaw it, oppreſs'd it preciſely, and paſſed over the caſe *E converſo*, which was but eſpeciall; and care, and they were loth to bring in this Caſe, by inſerting the word onely unto the firſt Caſe (S) to have penned it to the uſe onely of other perſons, for they had experience what doubt the word onely bred upon the Statute of 1. *Richard* 3. after this third Caſe, and before the third Caſe of Rents comes in the ſecond ſaving, and the reaſon of it is worth the noting, why the ſavings are interlaced before the third Caſe, the reaſon of it is, becauſe the third caſe needeth no ſaving, and the firſt two Caſes

did

did need ſavings, and that is the reaſon of that againe.

It is a generhll ground, that where an Act of Parliament is Donor, if it be penned with an (*ac ſi*) it is not a ſaving, for it is a ſpeciall gift, and not a generall gift, which includes all Rights, and therefore in 11 *Henry* 7. whereupon the alienation of Women, the Statute intitles the Heire of him in remainder to enter, you finde never a Stranger, becauſe the Statute gives entry not (*Simpliciter*) but within an (*ac ſi*) as if no Alienation had beene made, or if the ſame had beene naturally dead, Strangers that had right, might have entred, and therefore no ſaving needs, ſo in the Statute of 32. of Leaſes, the Statute enacts, that the Leaſes ſhall be good and effectuall in Law, as if the leſſor had beene ſeiſed of a good and perfect Eſtate in Fee-ſimple, and therefore you finde no ſaving in the Statute, and ſo likewiſe of divers other Statutes doe likewiſe, where a Statute doth make a gift or Title good, ſpecially againſt certaine perſons there needs no ſaving, except it bee to exempt ſome of thoſe perſons, as in the Statute of 1. *R.* 3. now to apply this to caſe of Rents, which is penned with an (*ac ſi*) (s.) as if a ſufficient grant, or lawfull conveyance had beene made, or executed by ſuch as were ſeiſed, why if ſuch a grant of a Rent had beene made, one that had an antient Right might have entred and have avoyded the charge, and therefore no ſaving needeth, but the ſecond firſt Caſes are not penned with an (*ac ſi*) but abſolute, that *Ceſty que uſe* ſhall be adjudged in Eſtate and Poſſeſſion, which is a Judgement of Parliament ſtronger then any Fine, to bind all Rights, nay it hath further words (s.) in lawfull Eſtate and Poſſeſſion, which maketh it the ſtronger then any in the firſt Clauſe, for if the words onely had ſtood upon the ſecond Clauſe (s.) that the Eſtate of the Feoffee ſhould bee in *Ceſty que uſe*, then perhaps the gift ſhould have beene ſpeciall, and ſo the ſaving ſuperfluous, and this note is materiall in re-

gard

gard of the great queſtion, whether the Feoffees may make any regreſſe, which Opinion (I meane that no regreſſe is left unto them) is principally to bee argued out of the ſaving; as ſhall be now declared: for the ſavings are two in number, the firſt ſaveth all Strangers Rights, with an exception of the Feoffees: the ſecond is a ſaving out of the exception of the firſt ſaving (s.) of the Feoffees in caſe where they claime to their own proper uſe: it had beene eaſie in the firſt ſaving out of the Statute) other then ſuch perſons as are ſeiſed, or hereafter ſhould bee ſeiſed to any uſe) to have added to theſe words (executed by this Statute) or in the ſecond ſaving to have added unto the words (clayming to their proper uſe) theſe words (or to the uſe of any other, and executed by this Statute, but the regreſſe of the Feoffee is ſhut out betweene the two ſavings, for it is the right of a Perſon clayming to an Uſe, and not unto his owne proper uſe, but it is to bee added, that the firſt ſaving is not to bee underſtood as the letter implyeth, that Feoffees to uſe ſhall bee barr'd of their regreſſe, in Caſe that it bee of another Feoffment then that whereupon the Statute hath wrought, but upon the ſame Feoffment, as if the Feoffee before the Statute had beene diſeiſed, and the diſſeis'd had made a Feoffment in Fee to *I. D.* his uſe, and then the Statute came, this executeth the Uſe of the ſecond Feoffment, but the firſt Feoffees may make a regreſſe, and they yet claime to an Uſe, but not by that Feoffment upon which the Statute hath wrought.

Now

NOw followeth the third Caſe of the Statute touching execution of Rents, wherein the materiall words are foure :

Firſt, whereas divers perſons are ſeiſed, which hath bred a doubt that it ſhould onely goe to Rents in Uſe, at the time of the Statute; but it is Explained in the Clauſe following (S) as if a grant had beene made to them by ſuch as, are, or ſhall be ſeiſed.

The ſecond word is (*Profit*) for in the putting of the Caſe, the Statute ſpeaketh of a Rent; but after in the Purview is added theſe words (or *profit.*)

The third word is (*ac ſi*) (S) that they ſhall have the (S) as if a ſufficient graat or lawfull conveyance had bin made and Executed unto them.

The fourth words are the words of Liberty and Remedies attending upon ſuch Rent (S) that hee ſhall diſtraine &c. and have ſuch Suits, Entries, and Remedies relying againe with an (*ac ſi*) as if the grant had beene made with ſuch collaterall penalties and advantages.

Now for the Proviſoes, the Makers of this Law did ſo abound with policy and diſcerning, as they did not onely fore-ſee ſuch miſchiefes as were incident to this new Law immediately, but likewiſe ſuch as were conſequent in a remote degree, and therefore beſides the expreſſe Proviſoes, they did adde three new Proviſoes which are in themſelves ſubſtractive Lawes, for foreſeeing that by the Execution of Uſes, Wills formerly made ſhould be over-throwne : They made an ordinance for Wills, fore-ſeeing likewiſe, that by execution of Uſes, women ſhould be doubly advanced : They made an ordinance for Dowers and Jointures, foreſeeing againe, that the execution of Uſes would make

franktenement paſſe by Contracts paroll. They made an ordinance for inrollments of Bargaines and Sales, the two former they inſerted into this Law, and the third they diſtinguiſhed into a Law apart, but without any preamble as may appeare, being but a Proviſo to this Statute, beſides all theſe provifionall Lawes; and beſides five Proviſois, whereof three attend upon the Law of Jointure, and two borne in *Wales*, which are not materiall to the purpoſe in hand. There are ſixe proviſoes which are naturall and true members and limbs of the Statute, whereof foure concerne the part of *Ceſty que uſe*, and two concerne the part of the Feoffees: The foure which concerne the part of *Ceſty que uſe*, tend all to ſave him from prejudice by the execution of the eſtate.

The firſt ſaveth him from the extinguiſhment of any Statute or Recognizance, as if a man had an Extent of a hundred Acres, and an Uſe of the inheritance of one. Now the Statute executing the poſſeſſion to that one, would have extinguiſht his Extent being intire in all the reſt: or as if the Commiſſioner of a Statute having ten Acres lyable to the Statute had made a Feoffment in Fee to a Stranger of two, and after had made a Feoffment in Fee to the uſe of the Conuzee and his Heires: And upon this Proviſo there ariſe three Queſtions: Firſt, whether this Proviſo were not ſuperfluous, in regard that *Ceſty que uſe* was comprehended in the generall, ſaving though the Feoffees be excluded.

Secondly, whether this Proviſo doth ſave Statutes or Executions, with an apportionment and Entire.

Thirdly, becauſe it is penned indefinitively, in point of time, whether it ſhall goe to Uſes limitted after the Statute, as well as to thoſe that were in being all the time of the Statute, which doubt is rather inforced by this Reaſon, becauſe there was for Uſes at the time of the Statute, for that the Execution of the Statute might

be

be wayved, but both poſſeſſion and Uſe ſince the Statute, may be wayved.

The ſecond proviſo ſaveth *Ceſty que vſe* from the charge of *primer Seiſin liveries Ouſter le maines*, and ſuch other duties to the King, with an expreſſe limitation of Time that he ſhalbe diſcharged for the time paſt, and charged for the time to come in a King S: *May* 1536. to be *communis terminus.*

The third proviſo doth the like for Fines, Reliefes, and Herriots, diſcharging them for the time paſt, and ſpeaking nothing of the Time to come.

The fourth proviſo giveth to *Ceſty que uſe* all collaterall benefits of Vouchers, Aides, priers, Actions of waſt, Treſpaſſe, conditions broken, and which the Feoffees might have had; and this is expreſly limitted for Eſtates executed before 1. *May* 1536. and this proviſo giveth occaſion to intend that none of theſe benefits would have beene carried to *Ceſty que vſe* by the generall words in the body of the Law (S) that the Feoffees eſtate, right, Title, and poſſeſſion, &c.

For the two proviſoes on the part of the Tertenant, they both concerne the ſaving of ſtrangers from prejudice &c.

The firſt ſaves Actions depending againſt the Feoffees, that they ſhall not abate.

The ſecond ſaves Wardſhips, Liveries, and *Ouſter Le maines*, whereof Title was veſted in regard of the Heire of the Feoffee, and this in caſe of the King only.

What Perſons may be ſeiſed to an Vſe, and what not.

What perſons may be Ceſty que uſe, and what not.

What Perſons may declare an uſe, and what not.

THough I have opened the Statute in order of words, yet I will make my Diviſion in order of matter, viz.

1. The rayſing of Uſes.
2. The interruption of Vſes.
3. The Executing of Vſes.

Againe, The raiſing of Uſes doth eaſily divide it ſelfe into three parts.

The perſons that are Actors to the Conveyance to Uſe.

The Uſe it ſelfe.

The forme of the Conveyance.

Then it is firſt to be ſeene what perſons may be ſeiſed to an Uſe, and what not, and what perſons may be *Ceſty que uſe*; and what not.

The King cannot be ſeiſed to an Uſe; no not where he taketh in his naturall body and to ſome purpoſe as a common perſon, and therefore if Land be given to the King, and *I. D. per terme de lour vies,* this Uſe is void for a moity.

Like Law is, if the King be ſeiſed of Land in the right of his Dutchy of *Lancaſter*, and covenanteth by his letters Pattents under the Dutchy Seale to ſtand ſeiſed to the uſe of his Sonne, nothing paſſeth.

Like Law, if King *R.* 3. who was Feoffer to divers uſes before he took upon him the Crowne, had after hee was King by his Letters pattents granted the Land over, the uſes had not bin renewed.

The Queene (ſpeaking not of an Imperiall Queene by

by marriage) cannot be ſeiſed to an uſe, though ſhe be a body inabled to grant and purchaſe without the King: Yet in regard of the government and intereſt the King hath in her poſſeſſion ſhe cannot be ſeiſed to an uſe.

A Corporation cannot be ſeiſed to an uſe, becauſe their capacity is to a uſe certaine; againe, becauſe they cannot Execute an Eſtate without doing wrong to their Corporation or Founder; but chiefly becauſe of the letter of this Statute which (in any clauſe when it ſpeaketh of the Feoffee) reſteth only upon the word (perſon) but when it ſpeaketh of *Ceſty que uſe*, it addeth perſon, or body politicke.

If a Biſhop bargaine or ſell Lands whereof hee is ſeiſed in the right of his Sea; this is good during his life; otherwiſe it is where a Biſhop is infeoffed to him and his Succeſſors to the uſe of *I. D.* and his heires, that is not good, no not for the Biſhops life, but the uſe is meerely voyd.

Contrary Law, of Tenant in Taile, for if I give Land in Taile by Deed ſince the Statute to *A.* to the uſe of *B.* and his heires; *B.* hath a fee-ſimple determinable upon the death of *A* without iſſue. And like Law, though doubtfull before the Statute was, for the chiefe reaſon which bred the doubt before the Statute was, becauſe Tenant in Tayle could not Execute an Eſtate without wrong; but that ſince the Statute is quite taken away, becauſe the Statute ſaveth no right of intayle, as the Statute of 1. *R.* 3. did, and that reaſon likewiſe might have bin anſwered before the Statute, in regard of the common recovery.

A feme Covert and an Infant, though under yeares of diſcretion, may be ſeiſed to an uſe; for aſwell as Land might deſcend unto them from a Feoffee to uſe; ſo may they originally be infeoffed to an uſe; yet if it be before the Statute, and they had (upon a Subpœna brought) executed their Eſtate during the coverture or infancy

they might have defeated the ſame, and when they ſhould have beene ſeized againe to the Uſe, and not to their owne uſe, but ſince the Statute, no right is ſaved unto them.

If a feme Covert or an Infant be enfeoffed to an Uſe precedent ſince the Statute, the Infant or Baron come too late to diſcharge or roote up the Feoffment; but if an Infant be infeoffed to the Uſe of himſelfe and his Heires, and *I. D.* pay ſuch a ſumme of money to the Uſe of *I. G.* and his Heires, the Infant may diſagree and overthrow the contingent Uſe.

Contrary Law, if an Infant be infeoffed to the Uſe of himſelfe for life, the remainder to the Uſe of *I. S.* and his Heires, he may diſagree to the feoffment, as to his owne Eſtate, but not to deveſt the remainder, but it ſhall remaine to the benefit of him in remainder.

And yet if an Attainded perſon be infeoffed to an Uſe, the Kings Title after Office found, ſhall prevent the Uſe, and Relate above it but untill office the *Ceſty que vſe* is ſeiſed of the Land.

Like Law of an Alien, for if Land be given to an Alien to an Uſe, the Uſe is not voyd *ab initio*: Yet neither Alien or Attainded perſon can maintaine an Action to defend the Land.

The Kings Villeine if he be infeoffed to an Uſe, the Kings Title ſhall relate above the Uſe, otherwiſe in Caſe of a common perſon.

But if the Lord be infeoffed to the Uſe of his Villeine, the Uſe neither riſeth, but the Lord is in by the Cõmon Law & not by the Statute diſcharged of the uſe.

But if the husband be infeoffed to the uſe of his wife for yeares, if he die, the wife ſhall have the Terme, and it ſhall not inure by way of diſcharge, although the Husband may diſpoſe of the wives Terme.

So if the Lord of whom the Land is held be infeoffed to the Uſe of a perſon Attainded, the Lord ſhall not hold by

by way of diſcharge of the Uſe, becauſe of the Kings Title, *An. diem & vaſtum.*

A perſon uncertaine is not within the Statute, nor any Eſtate in *nubibus* or ſuſpence executed, as if I give Land to *I. S.* the remainder to the right Heires of *I.D.* to the uſe of *I. N.* and his Heire, *I. N.* is not ſeiſed of the Fee-ſimple of an Eſtate *per vit.* of *I.S.* till *I.D.* be dead, and then in Fee-ſimple.

Liker Law if before the Statute, I give Land to *I. S. per auter vie* to an Uſe, and *I. S.* dyeth, leaving *Ceſty que vſe*, whereby the free-hold is in Suſpence, the Statute commeth, and no occupant entreth; the Uſe is not executed out of the free-hold in ſuſpence. For the occupant the Diſſeiſſor the Lord by Eſcheate: The Feoffee upon conſideration, not having notice, and all other perſons which ſhalbe ſeiſed to Uſe, not in regard of their perſons but of their Title. I referre them to my diviſion touching diſturbance and interruption of Uſes.

It followeth now to ſee what perſon may be a *Ceſty que vſe*, the King may be *Ceſty que vſe*; but it behoveth both the declaration of the Uſe and the conveyance it ſelfe, to be matter of Record, becauſe the Kings Title is compounded of both, I ſay, not appearing of Record, but by conveyance of Record. And therefore if I covenant with *I.S.* to leavy a Fine to him to the Kings uſe, which I do accordingly: And this deed of Covenant be not inrol'd, and the Deed be found by office the uſe veſteth not, *Econverſo* inrol'd. If I covenant with *I. S.* to infeoffe him to the Kings uſe, and the Deed be inrol'd and the feoffment alſo be found by office, the uſe veſteth.

But if I leavy a fine, or ſuffer a Recovery to the Kings uſe, and declare the uſe by Deede of Covenant Enrol'd, though the King be not party, yet it is good enough.

A Corporation may take an Uſe, & yet it is not material whether the feoffment or the Declaration be by deed; but I may infeoffee *I.S.* to the uſe of a Corporation and this uſe may be averred.

A

A Uſe to a perſon incertaine is not voyd in the firſt limitation, but executeth not till the perſon be in (*eſſe*,) ſo that this is poſitive, than an Uſe ſhall never be in Obeyance, as a Remainder may be, but ever in a perſon certaine upon the words of the Statute, and the Eſtate of the Feeoffees ſhall be in him or them which have the Uſe: The reaſon is, becauſe no confidence can be repoſed in a perſon unknowne and uncertaine; and therefore if I make a feoffment to the uſe of *I. S.* for life, and then to the uſe of the right Heires of *I. D.* the remainder is not in Obeyance, but the Reverſion is in the Feoffer, (*quouſque*.) So that upon the matter all perſons uncertaine in Uſe, are like conditions or limitations precedent.

Like Law if I Enfeoffee one to the uſe of *I. S.* for yeares, the remainder to the right Heires of *I. D.* This is not executed obeyance, and therefore not void.

Like Law, if I make a Feoffment to the uſe of my wife that ſhall be, or to ſuch perſons as I ſhall maintaine, though I limit no particular Eſtate at all; yet the uſe is good, and ſhall in the interim returne to the Feoffor.

Contrary Law, if I once limit the whole Fee-ſimple of the Uſe out of Land, and part thereof, to a perſon incertaine, it ſhall never returne to the Feoffer by way of fraction of the Uſe; but looke how it ſhould have gone unto the Feoffer; if I begin with a contingent Uſe, ſo it ſhall go to the remainder; if I intaile a contingent Uſe, both Eſtates are alike ſubject to the contingent Vſe when it falleth; as when I make a Feoffment in Fee to the uſe of my wife for life the remainder to my firſt begotten ſon; I having no Sonne at that time the remainder to my brother and his heires if my wife dye before I have any ſon, the Vſe ſhall not be in me, but in my brother. And yet if I marry againe and have a Sonne, it ſhall deveſt from my brother, and be in my Sonne, which is the skipping they talke ſo much of.

So

So if I limit an Uſe joyntly to two perſons; not in (*Eſſe*) and the one commeth to bee in *eſſe*, hee ſhall take the intire Uſe, and yet if the other afterward come in *eſſe*, hee ſhall take joyntly with the former, as if I make a Feoffment to the uſe of my Wife that ſhall bee, and my firſt begotten Sonne for their Lives, and I marry my Wife taketh the whole Uſe, and if I afterwards have a Sonne, hee taketh joyntly with my Wife.

But yet where words of obeyance worke to an Eſtate, executed in courſe of Poſſeſſion, it ſhall doe the like in Uſe, as if I infeoffee *A.* to the uſe of *B.* for life, the remainder to *C.* for life, the remainder to the right Heires of *B.* this is a good remainder executed.

So if I enfeoffee *A.* to the uſe of his right Heires *A.* is in the Fee-ſimple, not by the Statute, but by the Common Law.

Now are wee to examine a ſpeciall point of the diſability of perſons as to take by the Statute, and that upon the words of the Statute, where divers perſons are ſeiſed to the uſe of other perſons, ſo that by the letter of the Statute, no uſe is conteyned, but where the Feoffor is one, and *Ceſty que uſe* is another.

Therefore it is to bee ſeene in what Caſes the ſame perſons ſhall be both ſeiſed to the uſe and *Ceſty a que uſe*, and yet in by the Statute, and in what Caſes they ſhall be diverſe perſons, and yet in by the Common Law, wherein I obſerve unto you three things: Firſt, that the letter is full in the point. Secondly, that it is ſtrongly urged by the Clauſe of joynt Eſtates following. Thirdly, that the whole ſcope of the Statute was to remit the Common Law, and never to intermeddle where the Common Law executed an Eſtate, therefore the Statute ought to bee expounded, that where the party ſeiſed to the uſe, and the *Ceſty que uſe* is one per-

ſon, hee never taketh by the Statute except there bee a direct impoſſibiltie or impertinency for the uſe, to take effect by the Common Law.

And if I give Land to *I. S.* to the uſe of himſelfe and his Heires, and if *I. D.* pay a ſumme of mony, then to the uſe of *I. D.* and his Heires, *I. S.* is in of an Eſtate for life, or for yeares, by way of abridgment of Eſtate in courſe of Poſſeſſion, and *I. D.* in of the Fee-ſimple by the Statute.

So if I bargaine and ſell my Land after ſeven yeares, the Inheritance of the Uſe onely paſſeth, and there remaines an Eſtate for yeares by a kind of ſubſtraction of the Inheritance or *occupyer* of my Eſtate, but meerely at the Common Law.

But if I enfeoffee *I. S.* to the uſe of himſelfe intayle, and then to the uſe of *I. D.* in Fee, or Covenant to ſtand ſeiſd to the uſe of my ſelfe in tayle, and to the uſe of my Wife in Fee, in both theſe Caſes the Eſtate tayle is executed by this Statute, becauſe an Eſtate tayle cannot be reoccupied out of a Fee-ſimple being a new Eſtate, and not like a particular Eſtate for life or yeares, which are but portions of the abſolute Fee, and therefore if I bargaine and ſell my Land to *I. S.* after my death without Iſſue, it doth not leave an Eſtate tayle in mee, nor veſteth any preſent Fee in the bargaines, but is an uſe expectant.

So if I enfeoffee *I. S.* to the uſe of *I. D.* for life, and then to the uſe of himſelfe and his Heires, he is in of the Fee-ſimple meerely in courſe of Poſſeſſion, and as of a Reverſion, and not of a remainder.

Contrary Law, if I enfeoffee *I. S.* to the uſe of *I. D.* for life, then to the uſe of himſelfe for life, the remainder to the uſe of *I. N.* in Fee, now the Law will not admit fraction of Eſtates, but *I. S.* is in with the reſt by the Statute.

So if I infeoffee *I. S.* to the uſe of himſelfe and a Stranger,

Stranger, they ſhall be both in by the Statute, becauſe they could not take joyntly taking by ſeverall Titles.

Like Law if I infeoffee a Biſhop and his Heires to the uſe of himſelfe, and his ſucceſſors, he is in by the Statute in the right of his Sea.

And as I cannot raiſe a preſent uſe to one out of his owne ſeiſin, ſo if I limit a contingent or future uſe to one being at the time of limitation not ſeis'd, but after become ſeiſed at the time of the execution of contingent uſe, there is the ſame reaſon and the ſame Law, and upon the ſame difference which I have put before.

As if I covenant with my Sonne, that after his Marriage I will ſtand ſeiſed of Land to the uſe of himſelfe and his Heires, and before Marriage I enfeoffee him to the uſe of himſelfe and his Heires, and then hee marryeth, hee is in by the Common Law, and not by the Statute, like Law of a bargaine and ſale.

But if I had let to him for life onely, then hee ſhould have beene in for life onely by the Common Law, and of the Fee-ſimple by Statute. Now let mee adviſe you of this, that it is not a matter of ſubtilty or conceipt to take the Law right, when a man commeth in by the Law in courſe of Poſſeſſion, and where hee commeth in by the Statute in courſe of Poſſeſſion, but it is materiall for the deciding of many Cauſes and Queſtions, as for Warranties, Actions, Conditions, Wayners, Suſpitions, and divers other Proviſoes.

For example, a mans Farmer committed waſt,

after he in the Reverſion covenanteth to ſtand ſeis'd to the uſe of his Wife for life, and after to the uſe of himſelfe and his Heires, his Wife dyes, if hee bee in his Fee untouch'd he ſhall puniſh the waſt, if he be in by the Statute he ſhall not puniſh it.

So if I bee infeoffed with Warranty, and I covenant with my Sonne to ſtand ſeiſed to the uſe of my ſelfe for life, and after to him and his Heires; if I bee in by the Statute, it is cleare my Warranty is gone, but if I be in by the Common Law it is doubtfull.

So if I have an eigne Right, and be infeoffed to the uſe of *I. S.* for life, then to the uſe of my ſelfe for life, then to the uſe of *I. D.* in Fee, *I. S.* dyeth, if I be in by the Common Law, I cannot wayve my Eſtate having agreed to the Feoffment: but if I am in by the Statute, yet I am not remitted, becauſe I come in by my owne Act, but I may wayve my Uſe, and bring an Action preſently, for my Right is ſaved unto me by one of the ſavings in the Statute. Now on the other ſide it is to bee ſeene, where there is a ſeiſin to the uſe of another perſon, and yet it is out of the Statute which is in ſpeciall Caſes upon the ground whereſoever *Ceſty que uſe* had remedy, for the Poſſeſſion by courſe of Common Law, there the Statute never worketh, and therefore if a diſſeiſin were committed to an Uſe, it is in him by the Common Law upon agreement, ſo if one enter as occupant to the Uſe of another, it is in him till diſagreement.

So if a feme infeoffe a man (*Cauſa matrimonij prælocuti*) ſhe hath remedy for the Land againe by courſe of the Law, and therefore in thoſe ſpeciall Caſes the Statute worketh not, and yet the words of the Statute are generall, (where any perſon ſtands ſeiſed by force

of

of any Fine, Recovery, Feoffment, bargaine and ſale, agreement or otherwiſe) but yet the feme is to bee reſtrained for the reaſon aforeſaid.

It remaineth to ſhew what perſons may limit and declare an Uſe, wherein we muſt diſtinguiſh, for there are two kinds of Declarations of Uſes, the one of a preſent Uſe upon the firſt conveyance, the other upon a power of revocation or new declaration, the latter of which I referre to the diviſion of revocation, now for the former.

The King upon his Letters Pattents may declare an Uſe, though the Pattent it ſelfe implyeth an Uſe, if none be declared.

If the King gives Lands by his Letters to *I. S.* and his Heires to the uſe of *I. S.* for life, the King hath the Inheritance of the uſe by impliation of the Pattent, and no Office needeth for impliation out of matter of Record, amounteth ever to matter of Record.

If the Queene give Land to *I. S.* and his Heires to the uſe of all the Church-wardens of the Church of *Dale*, the Pattentee is ſeiſed to his owne uſe, upon that confidence or intent, but if a common perſon had given Land in that manner, the uſe had bin voyd by the Stat. of 23. *H.*8. and the uſe had returned to the feoffor & his heires, A Corporation may take an Uſe without deed as hath bin ſaid before, but can limit no Uſe without Deed.

An Infant may limit an Uſe upon a Feoffment, Fine, or Recovery, and he cannot Countermand or avoyd the Uſe, except hee avoyd the conveyance, contrary if an Infant covenant in conſideration of bloud or Marriage to ſtand ſeiſed to an Uſe, the Uſe is meerely voyd.

If

If an infant bargaine and ſell his Land for mony, for Commons, or Teaching, it is good with averment, if for mony otherwiſe, if it be proved it is avoydable, if for mony recited and not paid it is voyd, and yet in the caſe of a man of full age the recitall ſufficeth.

If Barron and feme be ſeiſed in the right of the feme, or by joynt Purchaſe during the Coverture, and they joyne in a Fine, the Barron cannot declare the Uſe for longer time then the Coverture, and the feme cannot declare alone, but the Uſe goeth according to the limitation of Law, unto the feme and her Heires, but they may both joyne in Declaration of the Uſe in Fee, and if they ſever, then it is good for ſo much of the Inheritance as they concurr'd in, for the Law avoucheth all one as if they joyn'd, as if the Baron declare an Vſe to *I. S.* and his Heires, and the Feme another to *I. D.* for life, and then to *I. S.* and his Heires, the Vſe is good to *I. S.* in Fee.

And if upon examination the Feme will declare the Vſe to the Judge, and her Husband agree not to it, it is voyd, and the Barons Vſe is onely good, the reſt of the Vſe goeth according to the limitation of Law.

FINIS.